

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37005
Docket No. MW-36791
04-3-01-3-363

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation
(Amtrak) – Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Supervisor R. Esposito and an employee from the Maintenance of Equipment Department to perform Maintenance of Way work (clearing snow) at the Parksburg Train Station on February 23, 2000, instead of Messrs. T. Burger and D. Sterbach (System File NEC-BMWE-SD-4030AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. Burger and D. Sterbach shall now each be compensated for eight (8) hours' pay at their respective straight time rates of pay.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This claim raises the issue of whether snow removal from the station platform of the Parksburg Station, an unmanned station, on the claim date was work reserved to BMW-employees by Agreement or practice, and whether its assignment to a supervisor and an employee of another craft violated the Scope and Work Classification Rules of the Agreement.

The Organization argued on the property that the snow removal work was "station maintenance" falling within the Scope Rule. Before the Board the Organization also posits that the platform is an appurtenance to the track, falling within the Classification of Work Rule. The Organization contends that BMW-employees have customarily and historically performed snow removal work, citing Third Division Awards 26456, 28040, and 28533. It notes that the Carrier failed to posit any valid defense to its improper work assignment or prove an affirmative defense of emergency, which is its burden, relying upon Third Division Awards 14491, 14982, 17051, 18447, 21090, 21607, 25325, 28759, 29505, 29854, 30971 and 32344. The Organization asserts that this represents a loss of work opportunity for the Claimants, who should be compensated regardless of the fact that they were working on the claim date, citing Third Division Awards 25825, 27119 and 27904.

The Carrier contends that the Organization failed to sustain its burden of proving that the work in dispute is reserved to it by Agreement or practice. It notes that the Organization never claimed exclusivity on the property and did not take issue with its assertion that snow removal at Parksburg and other unmanned stations was customarily performed by contractors. The Carrier asserts that snow removal is performed by numerous crafts and classes of employees, management and contractors on its property, and the Organization did not show that the Claimants have an exclusive right to it, citing Third Division Awards 12409 and 19773. The Carrier argues that clearing snow does not constitute maintenance of a station, relying upon Public Law Board No. 4622, Award 28. The Carrier contends that it was not obligated to delay the snow removal in this case to permit the Claimants, who were working elsewhere, an opportunity to perform it because such

delay would have jeopardized the safety of employees and customers. It notes that the Claimants had no loss of earnings associated with the disputed work.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving that the Carrier violated the Agreement by assigning the February 23, 2000 snow removal at Parksburg Station as it did in this case. It has not shown that snow removal on the station platform was "maintenance of . . . other structures" under the Scope Rule, or a "track appurtenance" under the Classification of Work Rule, or that BMWE-represented employees customarily and historically performed the work in dispute. Rather, the record contains unrebutted assertions that snow clearance of the platform at the Parksburg station, as well as other unmanned stations, has traditionally been performed by contractors and that snow removal on this property has been performed by many crafts. Because the Carrier is not limited by the Agreement or practice in its assignment of snow removal from the Parksburg station platform, the claim must fail. See, Third Division Award 12409.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of May 2004.